

STATEMENT OF THE CASE

Booker T. Davis, Sr.,¹ appeals his convictions for Possession of Cocaine, as a Class C felony; Maintaining a Common Nuisance, as a Class D felony; and Possession of Marijuana, as a Class A misdemeanor, following a bench trial. Davis presents a single issue for review, namely, whether the evidence is sufficient to support his convictions.

We affirm.

FACTS AND PROCEDURAL HISTORY

On September 25, 2007, the Fort Wayne Police Department executed a search warrant on two apartments located at 1221 and 1223 Fairfield Avenue in Fort Wayne. The apartments are housed in a single building, with the upper level apartment at 1221 Fairfield Avenue and the lower level apartment at 1223 Fairfield Avenue. The search warrant was issued based on three controlled buys of cocaine made by two confidential informants. In each instance, the confidential informant entered the lower level apartment to make the purchase. There a male accepted payment, entered a living room closet, made “a calling sound” inside the closet, handed the money through a slit to the upper level apartment, and someone in the upper level apartment then passed the drugs through the slit. State’s Exhibit 1 at 3-4.

In searching the apartment at 1221 Fairfield Avenue, officers located a handmade or cut-out “mail slit” that connected the upper level apartment (1221 Fairfield Avenue) with a closet in the lower level apartment (1223 Fairfield Avenue). In the upper level apartment, they found a plastic baggie of cocaine on a coffee table in the living room,

¹ As discussed below, Davis’ son is also named Booker T. Davis. All subsequent references to “Davis” are Booker T. Davis, Sr., the appellant.

three baggies of marijuana in a tissue box on another coffee table, and a scale with cocaine residue. Near the stairs they found marijuana and cash in a black zipper bag, in the bedroom they found various pipes, and throughout the apartment they found syringes.

When the search warrant was executed, Davis was in a vehicle across the street with a neighbor and his alleged caregiver, Myron Rutledge. Detective Darrin Strayer took Davis into the lower level apartment and read him his Miranda rights. During a pat-down search, the detective found \$1440 in cash on Davis: \$800 in his sock and the rest in his wallet.² Detective Strayer testified that Davis was hard to understand³ and “a little uncooperative” during the interview, but Davis did admit that he “lived upstairs in that apartment.” Transcript at 14.

The State charged Davis with possession of cocaine, as a Class C felony; maintaining a common nuisance, as a Class D felony; and possession of marijuana, as a Class A misdemeanor. Following a bench trial, the court found Davis guilty as charged. The court sentenced Davis to concurrent terms of four years for possession of cocaine, one and one-half years for maintaining a common nuisance, and one year for possession of marijuana. Davis now appeals.

DISCUSSION AND DECISION

Davis contends that the evidence is insufficient to support his convictions. When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003).

² Detective Strayer testified that he found a total of \$1400 or \$1440 on Davis, comprised of \$800 in Davis’ sock and approximately \$840 in Davis’ wallet. The record does not clarify or correct the math error.

³ Booker was sixty-six years old at the time and had previously suffered a stroke.

We look only to the probative evidence supporting the judgment and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Possession of Cocaine and Possession of Marijuana

The State charged Davis with possession of cocaine, as a Class C felony. To convict Davis of that offense, the State was required to prove, beyond a reasonable doubt, that Davis knowingly possessed cocaine (pure or adulterated) weighing three (3) grams or more. See Ind. Code § 35-48-4-6(a). The State also charged Davis with possession of marijuana, as a Class A misdemeanor. To convict on that offense, the State was required to show that Davis knowingly or intentionally possessed marijuana. See Ind. Code § 35-48-4-11.

Davis was not in actual possession of the contraband. But constructive possession is sufficient to support a conviction. Jones v. State, 807 N.E.2d 58, 65 (Ind. Ct. App. 2003), trans. denied. We have explained the proof necessary to show constructive possession as follows:

In the absence of actual possession of drugs, our court has consistently held that constructive possession may support a conviction for a drug offense. In order to prove constructive possession, the State must show that the defendant has both (1) the intent to maintain dominion and control and (2) the capability to maintain dominion and control over the contraband.

Id. (internal quotations and citations omitted). Control in this sense concerns the defendant's relation to the place where the substance is found: whether the defendant has

the power, by way of legal authority or in a practical sense, to control the place where, or the item in which, the substance is found. Id. Where a person's control is non-exclusive, intent to maintain dominion and control may be inferred from additional circumstances that indicate that the person knew of the presence of the contraband. Allen v. State, 798 N.E.2d 490, 501 (Ind. Ct. App. 2003). Those additional circumstances include: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the drugs; (5) drugs in plain view; and (6) location of the drugs in close proximity to items owned by the defendant. Id.; Jones, 807 N.E.2d at 65.

Davis contends that the evidence is insufficient to show that he had the intent to maintain dominion and control over the contraband because he neither owned the apartment nor had exclusive possession of it. Davis notes that his son, who is also named Booker T. Davis, owned both apartments and lived in the upper level apartment with his wife. Davis also points to testimony by Rutledge that Davis only slept occasionally in the upper level apartment and to the lack of any evidence that police found Davis' "clothing or other personal items" in either apartment. Finally, Davis argues that the State did not prove any of the additional circumstances that indicate that he knew of the presence of the contraband.

But Davis does not support his argument that ownership of the premises is necessary to support his convictions for possession of cocaine and marijuana, and Davis admitted to Detective Strayer that he lived in the upper level apartment. The evidence shows that drugs were found on coffee tables in the living room and, therefore, were in

plain view. And police found a medical bill addressed to “Booker T. Davis” at 1221 Fairfield Avenue in the apartment. Davis’ argument that the State did not show that he knew of the contraband or that the letter was not his amounts to a request that we reweigh the evidence, which we cannot do. See Jones, 783 N.E.2d at 1139. The evidence is sufficient to support Davis’ convictions for possession of cocaine and possession of marijuana.

Maintaining a Common Nuisance

Davis also contends that the evidence is insufficient to support his conviction for maintaining a common nuisance. To prove that offense, the State was required to show, beyond a reasonable doubt, that Davis knowingly or intentionally maintained the apartment at 1221 Fairfield Avenue and that the apartment was used one or more times for unlawfully keeping, delivering, and/or selling controlled substances or drug paraphernalia. See Ind. Code § 35-48-4-13(b). In Jones, 807 N.E.2d 58, 66-67, this court explained the meaning of “maintain” in the statute as follows:

While that statute does not define what it means to “maintain” a building or structure, we reject Jones’ assertion that to be convicted under [Indiana Code Section 35-48-4-13], the person must own or legally possess the building or structure. Indeed, if the legislature had intended to require legal ownership under the statute, it would have written that requirement into the statute. Rather, we apply the plain, ordinary definition of “maintain,” which means “to keep up or carry on; continue: maintain good relations.” THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1084 (3d ed. 1996) (italics original). Another definition is “to keep in an existing state; preserve or retain: maintain one’s composure.” Id. Finally, a third definition is “to keep in a condition of good repair or efficiency: maintain two cars.” Id. None of those common definitions encompass legal ownership

(Emphasis in original).

Davis argues that he was unable to control or maintain the upper level apartment because he was “infirm with a recent stroke, and managed by a care giver[.]” Appellant’s brief at 7. But, as noted above, we have rejected a similar argument based on ownership. Id. To prove that one has “maintained” a common nuisance, the State need only show that the offender conducted or allowed the offending activity on the premises. Here, the evidence shows that Davis lived in the upper level apartment from which drugs were sold through a slot in the floor to buyers in the lower level apartment. There was also evidence that the seller in the upstairs apartment was known as “T Baby,” an alias used by both Davis and his son. Davis’ argument that the evidence is insufficient to support his conviction because that same evidence could be used to convict his son again amounts to a request that we reweigh the evidence, which we will not do. See Jones, 783 N.E.2d at 1139.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.